

108TH CONGRESS
1ST SESSION

S. 1892

To provide information and advice to pension plan participants to assist them in making decisions regarding the investment of their pension plan assets, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2003

Mr. BAYH introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide information and advice to pension plan participants to assist them in making decisions regarding the investment of their pension plan assets, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. NOTICE OF HIGH CONCENTRATION OF PEN-**
4 **SION ASSETS IN EMPLOYER SECURITIES.**

5 (a) IN GENERAL.—Section 105 of the Employee Re-
6 tirement Income Security Act of 1974 (29 U.S.C. 1025)
7 is amended by adding at the end of the following new sub-
8 section:

1 “(e) NOTICE OF HIGH CONCENTRATION OF PLAN
2 ASSETS IN EMPLOYER SECURITIES.—

3 “(1) IN GENERAL.—In the case of an individual
4 account plan to which this subsection applies, if the
5 percentage of assets in the individual account that
6 consists of employer securities and employer real
7 property exceeds 50 percent of the total account, the
8 plan administrator shall include with the account
9 statement a notice that the account may be over-
10 invested in employer securities and employer real
11 property. Any determination under this paragraph
12 shall be made as of the most recent valuation date
13 under the plan.

14 “(2) EXCLUSION OF ASSETS HELD THROUGH
15 POOLED INVESTMENT VEHICLES.—Employer securi-
16 ties and employer real property held through an in-
17 vestment option of the plan which is not designed to
18 invest primarily in employer securities or employer
19 real property shall not be taken under paragraph (1)
20 in determining the percentage of assets that consist
21 of employer securities and employer real property.

22 “(3) APPLICATION.—

23 “(A) IN GENERAL.—This subsection shall
24 apply to any individual account plan which—

1 “(i) holds employer securities which
 2 are readily tradable on an established secu-
 3 rities market, and

4 “(ii) permits a participant or bene-
 5 ficiary to exercise control over assets in the
 6 individual’s account.

7 “(B) EXCEPTION FOR ESOPS.—This sub-
 8 section shall not apply to an employee stock
 9 ownership plan (as defined in section
 10 4795(e)(7)) of the Internal Revenue Code of
 11 1986) if the plan has no contributions which
 12 are subject to section 401 (k) or (m) of such
 13 Code.

14 “(4) EMPLOYER SECURITIES AND REAL PROP-
 15 erty.—For purposes of this subsection, the terms
 16 ‘employer securities’ and ‘employer real property’
 17 have the meanings given such terms by paragraphs
 18 (1) and (2) of section 407(d), respectively.”

19 (b) PENALTY.—Section 502 of the Employee Retire-
 20 ment Income Security Act of 1974 (29 U.S.C. 1132) is
 21 amended—

22 (1) in subsection (a)(6), by striking “(6), or
 23 (7)” and inserting “(6), (7), or (8)”,

24 (2) by redesignating paragraph (8) of sub-
 25 section (c) as paragraph (9), and

1 (3) by inserting after paragraph (7) the fol-
 2 lowing new paragraph:

3 “(8) The Secretary may assess a civil penalty
 4 against a plan administrator of up to \$100 a day
 5 from the date of the plan administrator’s failure or
 6 refusal to provide notice to participants and bene-
 7 ficiaries in accordance with section 105(e). For pur-
 8 poses of this paragraph, each violation with respect
 9 to any single participant or beneficiary shall be
 10 treated as a separate violation.”

11 (c) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to plan years beginning after De-
 13 cember 31, 2003.

14 **SEC. 2. TREATMENT OF QUALIFIED RETIREMENT PLAN-**
 15 **NING SERVICES.**

16 (a) IN GENERAL.—Subsection (m) of section 132 of
 17 the Internal Revenue Code of 1986 (defining qualified re-
 18 tirement services) is amended by redesignating paragraphs
 19 (2) and (3) as paragraphs (5) and (6), respectively, and
 20 by inserting after paragraph (1) the following:

21 “(2) LIMITATIONS.—

22 “(A) DOLLAR LIMITATION.—The aggre-
 23 gate amount which may be excluded with re-
 24 spect to qualified retirement planning services

provided to any individual during a taxable year shall not exceed \$1,500.

“(B) ADJUSTED GROSS INCOME.—No amount may be excluded with respect to qualified retirement planning services provided during a taxable year if the modified adjusted gross income of the taxpayer for such taxable year exceeds \$100,000 (\$200,000 in the case of married individuals filing a joint return). For purposes of this subparagraph, the term ‘modified adjusted gross income’ means adjusted gross income, determined without regard to this section and sections 911, 931, and 933.

“(3) CASH REIMBURSEMENTS.—For purposes of this subsection, the term ‘qualified retirement planning services’ includes a cash reimbursement by an employer to an employee for a benefit described in paragraph (1).

“(4) NO CONSTRUCTIVE RECEIPT.—No amount shall be included in the gross income of any employee solely because the employee may choose between any qualified retirement planning services provided by a qualified investment advisor and compensation which would otherwise be includible in the gross income of such employee. The preceding sen-

1 tence shall apply to highly compensated employees
 2 only if the choice described in such sentence is avail-
 3 able on substantially the same terms to each mem-
 4 ber of the group of employees normally provided
 5 education and information regarding the employer’s
 6 qualified employer plan.”

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 403(b)(3)(B) of such Code is
 9 amended by inserting “132(m)(4),” after
 10 “132(f)(4),”.

11 (2) Section 414(s)(2) of such Code is amended
 12 by inserting “132(m)(4),” after “132(f)(4),”.

13 (3) Section 415(c)(3)(D)(ii) of such Code is
 14 amended by inserting “132(m)(4),” after
 15 “132(f)(4),”.

16 (c) EFFECTIVE DATE.—The amendment made by
 17 this section shall apply to taxable years beginning after
 18 December 31, 2003.

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